

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

BNSF RAILWAY COMPANY, a
Delaware corporation,

Plaintiff,

v.

JOHN ELIZANDRO, in his official
capacity as acting Commissioner of the
Montana Department of Labor and
Industry,

Defendant.

CV-23-43-H-BMM

ORDER

Plaintiff BNSF Railway Company (“BNSF”) named the Montana Department of Labor and Industry (“Department”) in its Complaint for Declaratory Judgment and Injunctive Relief. (Doc. 1.) The Department moves to dismiss BNSF’s claims for relief as against the Department. (Doc. 13.) The Department invokes Eleventh Amendment sovereign immunity. (Doc. 15.)

While a State may waive its immunity, “[g]enerally, States are immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity.” *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021). This immunity applies to state agencies. *See Eaglesmith v. Ward*, 73 F.3d 857, 859 (9th

Cir. 1995), as amended (Jan. 23, 1996) (applying five-factor test). BNSF does not contest that the Department is a state agency entitled to sovereign immunity from this suit. BNSF does not object to dismissal of the Department from the action. (Doc. 16.)

Accordingly, **IT IS ORDERED** that the Department's Motion to Dismiss Complaint (Doc. 13) is **GRANTED**.

The caption is modified as reflected above.

DATED this 6th day of October, 2023.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court